



State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095
(603) 271-3503 FAX (603) 271-5171



Brian and Marlene Adair
PO Box 26
Danbury, NH 03230

Re: Adair's Motor Inn Water System
Danbury, NH
EPA #0578020

**ADMINISTRATIVE ORDER
No. WD 02-08**

February 20, 2002

A. INTRODUCTION

This Administrative Order is issued by the Department of Environmental Services, Water Division, to Brian and Marlene Adair pursuant to RSA 485:4 and RSA 485:58. This Administrative Order is effective upon issuance.

B. PARTIES

1. The Department of Environmental Services, Water Division ("DES"), is a duly constituted administrative agency of the State of New Hampshire, having its principal office at 6 Hazen Drive, Concord, NH 03301.
2. Brian and Marlene Adair are individuals having a mailing address of PO Box 26, Danbury, NH 03230.

C. STATEMENTS OF FACTS AND LAW

1. RSA 485 authorizes DES to regulate public water supplies. RSA 485:3 authorizes DES to adopt drinking water rules which identify contaminants which may have an adverse effect on health, which establish maximum contaminant levels that are acceptable for human consumption, which establish criteria and procedures to assure compliance with such maximum contaminant levels, and which identify criteria and standards to ensure the proper operation and maintenance of water systems. Pursuant to this authority, DES has adopted NH Admin. Rules Env-Ws 300.
2. Brian and Marlene Adair are the owners of a water system which serves a motel consisting of 14 units and a restaurant which seats an estimated population of 40 located in the community of Danbury, NH ("Water System"). The Water System is a transient, non-community water system as defined in NH RSA 485:1-a, X and Env-Ws 302.02 (bt).
3. Env-Ws 315.01 requires all transient, non-community water systems to monitor for bacteria in accordance with a schedule based on the population served by the system.
4. Former Env-Ws 325.02, now codified as Env-Ws 325.05, requires transient, non-community water systems serving fewer than 1,000 people to submit a minimum of one sample

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every six months to test for the presence of total coliform bacteria, and one sample quarterly following the presence of total coliform bacteria in the water sample.

5. Due to the presence of total coliform bacteria in its November 1996 water sample, the Water System is required to routinely collect one water sample every quarter during the scheduled sampling months of February, May, August, and November.
6. On or about February 4, 1997, a Letter of Deficiency ("February 1997 LOD") was issued to the Water system for failing to monitor/report for bacteria in May 1996 and December 1996. The Water System received the February 1997 LOD on or about February 7, 1997, as evidenced by the signed postal receipt.
7. On or about February 10, 1997, the Water System submitted a water sample to the state laboratory for bacterial analysis as requested in the February 1997 LOD.
8. Env-Ws 306.01(b) requires that each transient, non-community water system be subject to a sanitary survey at least once every five years. The purpose of a sanitary survey is to conduct on-site reviews in order to evaluate the adequacy of the source(s), storage facilities, equipment, operation, and maintenance to produce and distribute safe drinking water.
9. NH Admin. Rule Env-Ws 306.01(e) requires that significant operational or facility deficiencies be corrected within 90 days of the date of the sanitary survey.
10. DES issued Administrative Order WD 97-37 (the "1997 Order") to the Water System on July 28, 1997, for the Water System's failure to correct significant deficiencies identified in the July 17, 1996 sanitary survey report and for the past failure to submit water samples for total coliform analysis. The Water System received the 1997 Order on or about July 30, 1997, as evidenced by the signed postal receipt.
11. The Water System corrected the violations identified in the 1997 Order and DES released the Order on December 11, 1998.
12. The Water System submitted all routine bacteria samples for the assigned months of February 1998, May 1998, August 1998, and November 1998.
13. The Water System submitted all routine bacteria samples for the assigned months of February 1999, May 1999, August 1999, November 1999, and November 2000.
14. The Water System failed to submit water samples for bacterial analysis to the state laboratory or a state-certified laboratory during the system's scheduled sampling months of February 2000, May 2000, and August 2000.
15. Env-Ws 351.01 requires a water system that fails to submit any of the routine bacteria samples required by Env-Ws 325 to notify persons served by the system within 21 days of the failure to sample. Within 30 days of the failure to sample, the water system must provide proof of public notice to the DES.
16. The Water System failed to submit proof of public notice to DES for the failure to submit routine bacteria samples in February 2000, May 2000, and August 2000.

17. On February 22, 2001, the Water Division issued Notice of Proposed Administrative Fine and Hearing No. AF-01-007 ("NPF/H") to the Water System. The NPF/H sought to impose an administrative fine totaling \$3,500 for the failure to submit bacteria samples in February 2000, May 2000, and August 2000, and for the failure to submit proof of public notice for the February 2000, May 2000, and August 2000 sampling violations. The NPF/H set a hearing date of April 30, 2001. The NPF/H was received by the Water System on February 27, 2001, as evidenced by the signed postal receipt.
18. By certified letter dated April 24, 2001, the Water System was notified that the administrative fine hearing date had been rescheduled to July 16, 2001, due to the unavailability of the hearing officer. The letter was received by the Water System, as evidenced by the signed postal receipt.
19. On July 16, 2001, the administrative fine hearing was held as scheduled at 9:00 a.m. in Room C-110 at the DES offices in Concord, NH. Respondents Brian and Marlene Adair did not attend the hearing, nor did they contact DES before or after the hearing to request the hearing to be re-scheduled. The respondents have recently been sent a "Notice to Reconvene the Hearing", which offers them a second opportunity to contest the NPF on March 11, 2002.
20. During the time the NPF/H action has been pending, the Water System has failed to submit a bacteria sample in the scheduled sampling months of February 2001, May 2001, August 2001, and November 2001.
21. The Water System failed to submit proof of public notice for the February 2001, May 2001, August 2001, and November 2001 bacteria sampling violations.
22. On July 19, 2001, a sanitary survey was performed at the Water System by DES personnel. The July 30, 2001, survey report noted the following significant deficiencies:
 - a. Snowmobiles were being stored within the sanitary protective radius of the well; and
 - b. The well is located in a depression and is subject to surface water contamination.
23. DES has no record of the requested written response to the significant deficiencies identified in the July 30, 2001 sanitary survey report.
24. Env-Ws 326.30 requires all transient, non-community water systems to submit an annual nitrate sample.
25. Env-Ws 351.01 requires a water system that fails to submit a nitrate sample required by Env-Ws 326 to notify persons served by the system within 21 days of the failure to sample. Within 30 days of the failure to sample, the water system must provide proof of public notice to DES.
26. The Water System failed to submit a nitrate sample in 2000 and 2001
27. The Water System failed to submit proof of public notice to DES for the failure to submit a nitrate sample in 2000 and 2001.

D. DETERMINATION OF VIOLATIONS

1. The Water System has violated Env-Ws 325.05 by failing to submit water samples for total coliform analysis in February 2001, May 2001, August 2001, and November 2001.
2. The Water System has violated Env-Ws 351.01 by failing to provide proof of public notice to DES within 30 days of the failure to sample for total coliform bacteria in February 2001, May 2001, August 2001, and November 2001.
3. The Water System has violated Env-Ws 306.01(e) by failing to correct the significant deficiencies identified during the July 19, 2001 sanitary survey within 90 days of the inspection.
4. The Water System has violated Env-Ws 326.30 by failing to submit a water sample for nitrate analysis in 2000 and 2001.
5. The Water System has violated Env-Ws 351.01 by failing to provide proof of public notice to DES within 30 days of the failure to sample for nitrate in 2000.
6. As owners of the Water System, Brian and Marlene Adair are responsible for the violations noted herein.

E. ORDER

Based on the above findings, DES hereby orders Brian and Marlene Adair as follows:

1. Within 10 days of the date of this Order, submit a total coliform sample to the state laboratory or a state-certified laboratory. Within 10 days of completion, submit total coliform results to DES.
2. Within 15 days of the date of this Order, notify water consumers of the failure to sample for total coliform bacteria in February 2001, May 2001, August 2001, and November 2001.
3. Within 20 days of the date of this Order, submit proof of public notice required above to DES along with a cover letter indicating how, when, where, and by whom the public notice was given.
4. Between May 1, 2002, and May 15, 2002, submit a routine water sample for bacterial analysis to the DES laboratory or a state-certified laboratory.
5. Within 15 days of the date of this Order, Submit a nitrate sample to the state laboratory or a state-certified laboratory. Within 10 days of completion, submit the nitrate results to DES.
6. Within 15 days of the date of this Order, notify water consumers of the failure to sample for nitrate in 2000 and 2001.
7. Within 20 days of the date of this Order, submit proof of public notice to DES for the failure to sample for nitrate in 2000 and 2001 along with a cover letter indicating how, when, where, and by whom the public notice was given.
8. Within 30 days of the date of this Order, correct the deficiencies identified in the July 19, 2001, sanitary survey and submit a letter to DES stating what actions were taken to correct the deficiencies.

Send correspondence, data, reports, and other submissions made in connection with this Administrative Order, **other than appeals**, to DES as follows:

Alan Leach
Department of Environmental Services
6 Hazen Drive, PO Box 95
Concord, NH 03302-0095
Voice: (603) 271-2854
Fax: (603) 271-3490


F. APPEAL

Any person aggrieved by this Order may appeal the Order to the Water Council by filing an appeal that meets the requirements specified in Env-WC 200 within 30 days of the date of this Order. Copies of the rule are available from the DES Public Information Center at (603) 271-2975 or at <http://www.des.state.nh.us/desadmin.htm>. Appealing the Order does not automatically relieve Brian and Marlene Adair of the obligation to comply with the Order.

G. OTHER PROVISIONS

Please note that RSA 485:58 provides for administrative fines, civil penalties, and criminal penalties for the violations noted in this Order, as well as for failing to comply with the Order itself. Brian and Marlene Adair remain obligated to comply with all applicable requirements, in particular the need to (1) submit a total coliform sample to a laboratory certified to perform total coliform analysis in the scheduled sampling months of February, May, August, and November and (2) to comply with applicable drinking water statutes and rules. DES will continue to monitor Brian and Marlene Adair's compliance with applicable requirements and will take appropriate action if additional violations are discovered.

This Order is being recorded in the Merrimack County Registry of Deeds so as to run with the land.



Harry T. Stewart, P.E., Director
Water Division



George Dana Bisbee, Assistant Commissioner

Certified Mail/RRR: 7099 3400 0002 9772 2357
cc: ✓ Gretchen Rule, DES Legal Unit
Public Information Officer, DES PIP Office
NH AGO
NH DHHS, Bureau of Food Protection
Merrimack County Registry of Deeds
Board of Selectmen, Town of Danbury
US EPA, Region 1

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